2:Scott G-5 (1870's-1909)1910 AP1 Burma
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671 one, as also is the point as to who should be made defendants, and who should be the witnesses. The Talaing Dhammathat says that the incident occurred in the province of Kawdônpayit, in Hindustan, and that the case gave rise to the recognition of the root, trunk, and branches of the law, which till then had not been defined. From whom, or whether the doctor got his fee at all, we are not told.

693 Advocates, pleaders, or barristers were, it is stated, unknown until a case occurred when certain suitors from the jungle came before the king and were not able to understand the court language. A court official was therefore allowed to assist them and turn their rustic jargon into comprehensible speech. These as "standing before" the king were called Shéné, as it were mouthpieces for the parties to the suit, and the king, who acted as judge. The convenience derived from their superior knowledge and experience afterwards led to the establishment of a regular body of barristers.

●695 If the laws are, some of them, somewhat singular to those who are accustomed to the scientific Indian penal and civil codes, as well as to the growth of centuries of Western practice, the method of binding over witnesses to tell the truth, or at least the book on which they are required to pledge themselves, is sufficiently startling. The Book of the Oath, Kyeinsa, is still used in British courts of justice, and it is to be hoped that all the younger members of the population know what terrible punishments they are drawing down on themselves when they hold it over their heads and promise to tell the truth; what frightful penalties will befall them if they swerve in the least degree from the exact facts of the case. In the old times a man used always to be sworn on this book in a place where there was no shadow, or in a pagoda, and this custom was maintained to the end in native Burma. There was a special shrine for the purpose in Mandalay, and at the Shwe Mingôn Payā, near the oil-wells of Yenangyaung, there is a stone, ordinarily deposited between two images of the Hentha, the Brahminy goose, which the swearer takes in his hand, lamps being lighted at the same time. The book itself might not be kept in ordinary places. Some copies were kept in the court in a specially consecrated box, some in a zayat, and some, more

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terrific in their enunciations, in little receptacles fixed high up in trees.

With the view of guarding thoughtless or reckless people against themselves there were certain classes enumerated who should not under any circumstances be allowed to take the oath, or to appear as witnesses. These were:—1. Those who do not believe in the merit of good works. 2. Such people as trade with the goods of others. 3. Parties interested in the case, as well as their relations, friends, and enemies. 4. Great talkers. 5. Sick persons. 6. Old men. 7. Children. 8. Overbearing men. 9. Public singers. 10. Actresses. 11. Women of ill fame. 12. Goldsmiths. 13. Painters. 14. Blacksmiths. 15. Cobblers. 16. Asthmatic persons. 17. Low people. 18. Gluttons. 19. Gamblers. 20. Hot-tempered people. 21. Doctors. 22. Thieves. 23. Pregnant women. 24. Hermaphrodites, a by no means uncommon class in Burma. If, however, both parties to the suit gave their consent, some of these classes might be allowed to give testimony. Another curious old provision was that when one of the litigants produced a witness, he himself was not required to take the oath, while contrariwise, if he swore on the book, it was not imperative that he should call witnesses. [143]

The Book of the Oath is not quite fixed in its length, nor in the number of the imprecations which it threatens against false witnesses. Some copies are much more diffuse than others. It is always written on palm-leaf, in the ordinary character, and these in English courts are kept wrapped up in the ecclesiastical kabbalwè, usually sewn for greater convenience. The commonest version is as follows:—

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I will speak the truth. If I should be influenced by the laws of demerits, namely, passion, folly, anger, false opinion, immodesty, pride, scepticism, hard-heartedness, then may all these calamities attend me and my relations, wherever we may be, by land or by water, travelling or remaining quietly at home. May the nats who guard the sacred heavens, the athura nats and all other giants, the nats who guard the three Baskets of the Sacred Law, delivered by the most excellent Buddha, and all the other holy writings and sermons; may the nats, the guardians of the sacred relics

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the holy hair, the teeth, the jawbone, the frontal bone, and all the other relics; the keepers and warders of countless shrines, all golden and made famous by sacred memories; the protectors of the images and figures of the supreme Buddha; may the nats who guard the sacred mount and all the hills of the Southern Island; the nats who watch and ward the mighty rivers, the lesser streams, the lakes, the torrents, cataracts, and whirlpools; the nats who preside over the vast forests and the single trees; the nats of the sun, the moon, the stars, and meteors, the clouds, winds, mists, and exhalations; may the nagā and the galôn, hideous dragons, and cruel birds, all bilus, ogres, demons, warlocks, all the evils that come from without the body; may all these spirits and ill things unite to slay me and mine, to the utmost limits of kinship, if I speak not the truth.

When I and my relations are on land, let all the hideous land creatures, tigers, bilus, elephants, male and female, demons and giants, buffaloes, poisonous serpents, the cobra, and the hamadryad, the scorpion, and the centipede; may they all seize, bite, crush, strangle, and devour us; may the earth open and swallow us up; a thunderbolt from heaven descend and annihilate us, if I speak not the truth.

When we travel by water may our boats sink and be shattered by storms; may crocodiles, writhing snakes, and ravenous fishes kill and devour us, that we suddenly die, perish, and come to utter destruction, if I speak not the truth.

May the five calamities occasioned by fire, water, thieves, governors and enemies oppress us; may we be subject to all the maladies of the body; may we be as fools and idiots, afflicted with madness and leprosy, with all kinds of loathsome disease and evils that deform the body, with itch, scurvy, ulcers, deafness, blindness, dysentery, the plague, and all manner of mental and corporal miseries; may we incur the hatred and punishments of judges and rulers; may we be for ever separated from our forefathers, children, and relations, throughout all succeeding worlds; may fire destroy our goods; lances, swords, arrows, and knives, and all sorts of weapons cut and pierce and maim our bodies; may I die instantly, vomiting up clotted, black blood before the assembled people, if I speak not the truth.

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Moreover, if I speak not the truth, may I and all my family after death be instantly cast into the abyss of hell, there to wander for a cycle of worlds through the eight great hells, and all the smaller ones, suffering from all the torments of these places; and when at length I shall emerge thence, may I become a pyeitta, or a thurakè, and thereafter some hideous animal, passing through all the wretchedness of the four states of punishment. Finally, when after innumerable worlds I shall at length once more become man, may I be the slave of other men a hundred and a thousand times, if I speak not now the truth.

But if I speak truth, may I and all my relations escape the three calamities, the four states of punishment, and the five enemies; may all the ills in the body and all that are without the body keep far away; may our wealth, honour, and estimation ever increase, and when we die may we attain the happiness of men and dewas, and speedily entering on the noble path, reach the cloudless peace of Ne'ban.

A desire to avoid denouncing on themselves all these fearsome penalties led in the old times to a good deal of trying by ordeal, a form of decision which still prevails extensively in country districts, and occasionally was made use of even in Mandalay. The forms used are those familiar in old times in other parts of the world, such as eating consecrated rice, like the first English *corsnaed*, plunging the finger wrapped in a thin palm-leaf into melted tin; immersing accuser and accused in water to see who would remain longest below and prove his innocence or guilt. The yahans are usually present on these occasions, and recite certain formulæ beforehand, a great concourse of people assembling to see the test. The opposing parties wade into the river, or into a tank, up to the chest and then duck under, a couple of men holding a board over their heads to keep them down. The one that comes up first is cast in the case. Another form common at the pagodas is for both parties to resort thither, when the monks again recite the precepts and sundry other phrases. Then equal parts of wax are carefully weighed out, and from these candles are made for plaintiff and defendant. They are lighted simultaneously, and the holder of the candle which first burns out

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615 is adjudged to have lost the case, and judgment is delivered forthwith. The winning party, for all the friends are always present, immediately cause their band to strike up, dancers perform and songs are sung, and every token of triumph is
696 exhibited. Unfortunately, however, for any supposed efficacy of the system, substitutes are allowed, and in addition to this bribery plays as important a part almost as it did in the law-courts themselves. The man whose money went farthest won his case, whether decided according to the principles of the Dhammathat or the lottery of the ordeal.

681 The punishments inflicted were sometimes very cruel, and the treatment of the prisoners occasionally savage in the extreme. In criminal cases torture was frequently applied to extort confession from the accused or evidence from the witnesses. Rich men usually suffered nothing worse than a fine. For the impecunious, sentences varied from sundry stripes with a rattan, with or without imprison-
[567] ment, to mutilation, perpetual slavery, and death. Except for debt, a man sentenced by the court to slavery became so with all his descendants for ever, and they were usually allotted to some pagoda, doomed to support life by begging as tadaungsa, or relegated to some other of the outcast classes. Death in Mandalay was almost invariably by decapitation, the agony of the condemned being occasionally prolonged by a fiendish executioner; the custom of throwing victims to be devoured by wild beasts, or trodden to death by wild elephants in the elephant-trap, was latterly wholly given up. In the provinces, however, other methods were very frequently adopted. North of the capital "crucifixion" was particularly common. The letwakat, or wakattaing, does not at all resemble the ordinary pictorial representation of the cross. It is more like a double ladder, consisting of three stout bamboos fixed upright in the ground, three bars lashed to them horizontally with canes, and over these again two cross-bars in the shape of a St. Andrew's cross. These punishment stakes were most frequently put up on the river-bank or on sandbanks in the stream, and were particularly common where the Shan and Kachin hills come down anywhere near the Irrawaddy. Sometimes the criminal was killed before he was lashed up, sometimes he was tied up

16:Fielding Hall G-3 (1885-1890) 1898 AP1 Burma
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776 alone about midway between the river and the Shan
823 Mountains. It is thus very conspicuous, having no hills near it to share its majesty; and being in sight from all the old capitals, it is very well known in history and legend. It is covered with dense forest, and the villages close about are few. At the top there is a crater with a broken side, and a stream comes flowing out of this break down the mountain. Probably it was the denseness of its forests, the abundance of water, and its central position, more
[579] than its guardian Nats, that made it for so many years the last retreating-place of the half-robber, half-patriot bands that made life so uneasy for us. But the Nats of Popa Mountains are very famous.

776 When any foreigner was taken into the service
● 695 of the King of Burma he had to swear an oath of
823 fidelity. He swore upon many things, and among them were included 'all the Nats in Popa.' No Burman would have dared to break an oath sworn in such a serious way as this, and they did not imagine that anyone else would. It was and is a very dangerous thing to offend the Popa Nats; for they are still there in the mountain, and everyone who goes there must do them reverence.

776 A friend of mine, a police officer who was en-
823 gaged in trying to catch the last of the robber chiefs
[782] who hid near Popa, told me that when he went up the mountain shooting, he, too, had to make offerings. Some way up there is a little valley dark with overhanging trees, and a stream flows slowly along it. It is an enchanted valley, and if you look closely you will see that the stream is not as other streams, for it flows uphill. It comes rushing into

25; Ferrars E-5 (ca. 1890) 1901 APl Burma
Burmese AP4

378. THE PALACE GARDENS.

the cause of suffering and death, and the discredit reflected on officialdom by its methods, lead the best elements of the population to shun office, as a touching of pitch. The dearth of ability and character in the governing classes leaves the governed without efficient protection. The religious motive further operates in withholding information about criminals.

A pregnant category is that of the "five enemies"—Fire, Water, Robbers, Rulers, Ill-wishers. The governors and deputies who acted as judges heard causes at the *yôn*, an open shed in a public place. But every cause was presented in the first instance at the house of the official, and it is contrary to accepted ideas of politeness to approach a superior empty-handed, even on a mere visit of courtesy. The *pros* and *cons* of the case were understood before the regular hearing. At the hearing, the advocates of the parties (*ashé-ne*) publicly presented their pleas and the evidence was recorded. The Burmese form of oath is to take the *kyanza* in the hands, a book of imprecations which the witness invokes on his head if he should speak falsely. The judge or judges intimated their finding to their clerks (*sayé*), who recorded it in official style and read it out. The punishments awarded to criminals and the condition of prisoners were much like those prevailing in Europe at the time of the Renaissance. Every judgment of importance was registered in the *Hluttaw* or chancellery at the capital, presided over by the four chief ministers (*Wundyi*), through whom all royal commands to the governors of provinces issued. There was no regular system of appeals. The Hindu code of Manú served as a body of law, and statutes were decreed by the kings; but *thazan* (custom) supplied standards of a more practical and stable nature.

379. ROYAL MAID OF HONOUR (APYODAW).

29: Slater M-4 (no date) 1951 AP1 Burma
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doubtless a virtue enjoined by Buddhism. Carried to this extreme, however, has it not distorted Buddhism beyond recognition?

The Buddhist reply is two-fold. In the first place, it is claimed that there are *Nat* beliefs and practices which are *not* inconsistent with Buddhism. Since the normal Buddhist foresees many possible rebirths before he attains Nibbāna, there is no reason why some of these rebirths should not occur in a *Nat* realm. As to the denial of the soul, that raises difficulties, but are they so very different from the questions raised by the *Jātaka* stories in Buddhist tradition itself? The learned Buddhist has his own explanations, and the villager is inclined to regard life itself as ultimately as great a mystery as Nibbāna, while he does lip service to the *an-attā* doctrine (soul-denial). 'The Buddha accepted the Indian universe of his day ready-made' with its conception of heavens and hells and innumerable worlds.[17] Popular Buddhism, as popular religion everywhere, lives in narrative form, and the ordinary Burman dwells in two worlds of story, Buddhist and *Nat*, which fuse together.

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As to *Nat* practices, some of these are innocent, and others have been given a Buddhist ethical content. Gratitude, for example, is both natural and good in itself. What harm, then, if a villager presents flowers at a *Nat* shrine from such a motive?[18] As to propitiation, even in this present life, men deem it wise to placate powerful humans. Buddhism, therefore, can wisely and tolerantly assimilate many *Nat* conceptions and practices without inconsistency. So it is argued.

Other ideas and customs, however, are admittedly incompatible with true Buddhism. These, it is claimed, have either been opposed or they have been tolerated for a time in confidence that sound religion would eventually prevail. Asked why he allowed *Nat* images in a Buddhist shrine, King A-naw-ra-hta is said to have replied, "Men will not come for the sake of the new faith. Let them come for their old gods and gradually they will be won over."[19] This confidence, it is held, has been justified: Buddhism has at least prevailed sufficiently to take the sting out of Animism; human sacrifice is no longer tolerated, and even animal sacrifices are furtive.

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Is there then no surviving superstitious fear of the *Nats*? This is debated. Temple quotes a formidable Oath, administered in the courts of law, which invokes the *Nats*:

"I will speak the truth.... May the Nats who guard the sacred heavens ... the keepers and warders of countless shrines ... the Nats

[17] J. B. Pratt, *The Pilgrimage of Buddhism*, chap. v, p. 76.

[18] Moung Po Me, "Animism or Agnosticism?" *Buddhism*, Vol. I, No. 1 (1933, Rangoon), p. 95.

[19] H. Fielding, *The Soul of a People*, chap. VII, p. 262.

29: Slater M-4 (no date) 1951 AP1 Burma
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who watch and ward the mighty rivers ... may the nāga and the galōn, hideous dragons and cruel birds, all ogres and demons ... may all these spirits and ill things unite to slay me and mine to the utmost limits of kinship, if I speak not the truth...."[20]

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Respectable persons have trembled at the prospect of taking this oath, says Temple, so great was their dread of the *Nats*. A British magistrate, however, writing at a later day, observed drily that the fearsome Oath did not prevent false witness.[21] Perhaps these later witnesses did not know its terms, since the Oath was not read out in his court, only handled. Perhaps, however, they did not fear the *Nats* as much as their sires did. We may indeed question whether men who can talk of the Nats reforming their ways and turning to religion can hold them in any lively dread. Smeaton, in his *Loyal Karens of Burma*, refers to some Christian converts who still propitiated the *Nats*. "We must throw some sops to the foul demons who afflict us," they explained, "but our hearts are ever looking for God." Their Buddhist neighbours might offer a similar explanation. They may still deem it prudent to throw some sops to the *Nats*, while their hearts are towards the Buddha. We may term such an attitude superstitious, remembering that similar superstitious practices survive on similar grounds in other religious traditions. But we may well hesitate before we describe the Burmese as *Nat*-worshippers or say that their Buddhism is only a veneer.

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The Burman may claim that, while certain aspects of Animism can be tolerated without inconsistency, Buddhism has, in fact, opposed the more objectionable practices, has prevailed against them, and has altered the attitude to the *Nats*. This, in substance, is the reply contained in an article criticising the statement in the Census Report shortly after its publication. The *Nats*, says the writer, Moung Po Me, 'are real beings to the Burman and Buddhism does not deny their existence.' But they are certainly not bogeys. It is only when the Burman deviates from Buddhist ethics that Buddhism becomes a venee .[22]

His verdict is confirmed by other observers who may be considered more impartial. "The nats were the gods of Burma before the Buddha arrived," says Professor Pratt. "But as soon as he came they learned their place as merely subordinate spirits, and they have kept their place very well ever since."[23] "Were spirit worship twice as prominent as it is," observes a Christian missionary, "I should still call Buddhism the religion

[20] Temple, *The Thirty Seven Nats*, p. 4; cf. Scott, *The Burman*, Vol. II, chap. XXVI, p. 250.

[21] C. J. Richards, *The Burman*, p. 50.

[22] Article in *Buddhism*, cited supra.

[23] *The Pilgrimage of Buddhism*, chap. VII, p. 127.